

Misprision of a Felony? Using State and Federal “Failure to Report a Felony” Statutes to Illustrate Language Choices in Legislation



Motivation



Ohio Statute

Citation: Ohio Rev. Code §2921.22

Title: Reporting a Felony

- (A) “No person, **knowing** that a **felony** has been or is being committed, shall **knowingly fail to report** such information to law enforcement authorities.”
- (B) Addresses gun shot and stab wounds
- (C) Addresses discovery of a body
- ...
- (G) Exceptions?

Ohio Statute

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Title: Reporting a Felony

(A) “No person, **knowing** that a **felony** has been or is being committed, shall knowingly **fail to report** such information to law enforcement authorities.”

...

(G) Exceptions → if information would incriminate:

- Husband and Wife
- Immediate Family Member

Ohio Statute

Three elements:

1. Commission of a felony (by someone)
2. Knowledge of the commission of the felony
3. Failure to make known



Ohio Statute

- “Husband and wife” exception?
- *Obergefell v. Hodges*?



Federal Statute

Citation: 18 U.S.C. § 4

Title: Misprision of Felony

“Whoever, having **knowledge** of the **actual commission of a felony** cognizable by a court of the United States, **conceals** and **does not as soon as possible make known** the same to some judge or other person in civil or military authority under the United States, shall be fined under this title or imprisoned not more than three years, or both.”

Federal Statute

Four elements:

1. Commission of a felony (by someone)
2. Knowledge of the commission of the felony
3. Concealment
4. Failure to make known

**NO spousal exception



Client Fact Pattern



Applying Ohio Statutory Elements to Client Facts

Element	Client Facts?
Felony Committed	Yes: Domestic Terrorism
Knowledge Thereof	Yes: Spouse Admitted Involvement
Failure to Report	Yes
BUT	Spousal Exception

Applying Federal Statutory Elements to Client Facts

Element	Client Facts?
Felony Committed	Yes: Domestic Terrorism
Knowledge Thereof	Yes: Spouse Admitted Involvement
Failure to Report	Yes
Concealment?	?

Building a Case Factor Chart

Factors?	<i>Gravitt</i> Holding? AC	<i>King</i> Holding? NO AC	<i>Goldberg</i> Holding? NO AC	<i>Brantley</i> Holding? AC
Driving v. riding in a car	Drove the perps to retrieve stolen goods and clothes	Only rode as a passenger (passive)		
Accepting stolen money		Just receiving \$\$ was not enough (could have been debt repayment?)		
Camouflaging the felons or equipment	Used his wife, child, boat to camouflage			Hid a car with missing license plate; text messages/calls
Continuing normal routine			Continued writing prescriptions	

Organizing the Discussion Section

- Legal Issue: “Our client, _____ (“_____”), seeks legal advice regarding _____.”
- RULES: Two Statutes
 - Ohio (elements; explain briefly why it doesn’t apply)
 - Federal
 - Four elements
 - Narrow to element at issue: active concealment
- **Synthesized RULE on active concealment**
- Transition to Rule Explanations
- Transition to Rule Application
- Conclusion

Factors Gleaned from the Cases

- The **active** or passive nature of the behavior?
- Efforts to hide the felon or the proceeds of the crime?
- Steps to enable the felon's escape?
- Activities outside the person's normal routine?



Crafting a Synthesized Rule Statement

When determining whether a defendant concealed a felony, courts consider the following factors: (1) _____;
(2) _____; (3) _____;
and (4) _____.

Challenge: Parallel Grammatical Structure!

Crafting a Synthesized Rule Statement

Or a DEFINITION of concealment?

Concealment is _____.

Concealment means _____.

Challenge: not *using the word “conceal” in the definition!*

Should **concealment** be defined in the statute?

- Concealment is _____.
- Concealment means _____.

OR

- Just add the word “active”?

The degree of clarity at which a televised image broadcast signal is received.

def·i·ni·tion n. 1.
The teacher gave definitions of the new words.
of an image (picture) on a TV screen.

Common Issues I Noticed in Conferences

- Substantive:
 - Addressing both the Ohio statute's **exceptions**
 - **Expressly narrowing** the memo's issue to the concealment element of the federal statute
 - **Constructing a helpful Rule Statement to define concealment (resistance to factors)**
 - Being careful not to make **assumptions** about the reader's knowledge (QP, BA, SOF, REs)
 - Addressing all of the client's key facts → not just the helpful ones
 - Bias (lack of empathy)

Result

15 Students: Client was not likely to be charged with misprision

5 Students: GUILTY!

RESULT

Thank You!

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